

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

IN RE: FISHER-PRICE ROCK 'N PLAY
SLEEPER MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

MDL No. 1:19-md-2903

This Document Relates to: ALL CASES

Hon. Geoffrey W. Crawford

**NOTICE OF MOTION TO EXCLUDE THE
DECLARATION AND OPINIONS OF COLIN B. WEIR**

Pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), Defendants Fisher-Price, Inc., and Mattel, Inc., move to exclude from evidence the Declaration of Colin B. Weir (Dkt. No. 125-2), on which plaintiffs rely in support of their motion to certify a California class (Dkt. No. 283 and supporting papers).

As this Court knows, Defendants moved to exclude Mr. Weir's declaration and opinions in connection with an earlier round of class-certification briefing, which the Court ultimately narrowed to focus on New York class issues. *See* Dkt. Nos. 168, 214. The Court denied Defendants' motion on October 19, 2021—*i.e.*, before entering its order directing the parties to focus on the New York class issues. *See* Dkt. Nos. 210, 214. Accordingly, Defendants believe the Court intended for its ruling to apply with respect to each putative state class, including plaintiffs' current motion to certify a California class. However, for the avoidance of any doubt, and to preserve the issue for appeal, Defendants submit this separate motion to exclude Mr. Weir's opinions in connection with Plaintiffs' motion to certify a California class for the reasons previously given.

In support of this Motion, defendants rely on their prior memorandum of law (Dkt. No. 168-1), declaration of Adrienne E. Marshack (Dkt. No. 168-2), and supporting exhibits (Dkt. Nos. 168-3 and -4), as well as all prior pleadings and proceedings.

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